

CRIMINAL REVISION APPLICATION NO.25 OF 2001

Mr. Remedios Vaz,
s/o Santan Vaz,
major, r/o H.No.171,
Cansaulim, Salcete, Goa. ... Applicant.

versus

State of Goa,
represented by the
Additional Public Prosecutor. ... Respondent.

Mr. Nitin Sardessai, Advocate for the Applicant.

Mrs. Winnie Coutinho, Additional Public Prosecutor for the
State.

CORAM: P. V. HARDAS, J.

DATED: 9TH JANUARY, 2002.

ORAL JUDGMENT

The Applicant has filed the present Criminal Revision Application under Section 397 of the Code of Criminal Procedure assailing the Judgment of the Sessions Judge, Panaji, dated 14th August, 2001, dismissing his Appeal and maintaining his conviction for an offence punishable under Sections 279/304-A and 338 of the Indian Penal Code, under Section 134(a) (b) and under Section 3 of the Motor Vehicle Act, 1989, confirming the conviction and sentence as passed by the Judicial Magistrate, First Class, Mapusa, on 24th January, 2001, in Criminal Case No.167/97/Sr.

2. The brief facts necessary for the decision of the Criminal Revision are set out hereunder:-

The Applicant, who was the original Accused before the learned Judicial Magistrate, First Class at

Mapusa, in Criminal Case No.167/97/Sr was prosecuted for the aforesaid offences on the allegation that on 7th August, 1997, at about 6.00 p.m., the Applicant, who was driving a vehicle known as Tata Sumo jeep, bearing registration No.GA-02-A 9064, while proceeding towards Calangute from Porvorim, drove the said vehicle in a rash and negligent manner and dashed against a pedestrian girl by name Vandana Goel, aged 21, resulting in her death and also dashed against a Kinetic Honda scooter bearing No.GA-01-F 0229 causing grievous injuries to its rider Luis D'Souza. The said accident occurred at Sangolda on Chogam road. The Applicant was alleged to have fled away from the scene of the accident.

3. A charge sheet for the aforesaid offences came to be filed against the Applicant and the learned Trial Magistrate explained the particulars of the offence/substance of accusation to the Applicant. The Applicant denied his guilt and claimed to be tried. The prosecution in support of its charges examined P.W.1, Subhash Mithal, P.W.2, Shalma Nasnodkar, P.W.3, Pandurang Naik, P.W.4, Ganpat Parab, P.W.5, Luis D'Souza, P.W.6, Janu Kerkar, P.W.7, Rajendra Shukla, P.W.8, Anthony Pereira and P.W.9, P.S.I. Maheshwar Naik.

4. P.W.1, Subhash Mithal, P.W.2, Shalma Nasnodkar and P.W.4, Ganpat Parab were the occupants of Tata Sumo jeep which knocked down Vandana Goel and Luis D'Souza. P.W.3, Pandurang Naik, is a panch witness in respect of

Inquest Panchanama at Exh.PW3/A. P.W.6, Janu Kerkar, is a panch witness to the scene of the accident panchanama at Exh.PW6/A colly and the sketch map is a part of the said panchanama. P.W.5, Luis D'Souza, who was driving Kinetic Honda scooter was injured. The injury certificate of P.W.5, Luis S'Souza is at Exh.PW7/A and is proved by P.W.7, Dr. Rajendra Shukla. P.W.7, Dr. Rajendra Shukla, has stated that P.W.5, Luis D'Souza, had a traumatic amputation of left fifth finger and the injury was grievous in nature. P.W.8, Anthony Pereira, is the brother-in-law of the owner of Tata Sumo jeep and who has proved that the Applicant was the driver of the Tata Sumo jeep. P.W.9, Maheshwar Naik, is the Investigating Officer. The Post Mortem Report of Kum.Vandana Goel is at Exh.PW9/A colly.

5. The Accused in his statement under Section 313 of Criminal Procedure Code in response to Question No.17 had stated that he had nothing to say in the matter and a false case had been lodged against him.

6. The evidence of the three occupants of the Tata Sumo jeep is that the said Tata Sumo jeep was proceeding towards Calangute and the driver had lost control over the vehicle and in the process of controlling the vehicle the said vehicle swerved towards the right side of the road and knocked down Vandana Goel who was going from the opposite direction. The deceased Vandana Goel was dragged by the Tata Sumo jeep which came to a halt near the mud portion of the road. The driver/Applicant fled from the scene of the

accident and the other occupants of the vehicle on getting down from the vehicle noticed that the deceased had succumbed to her injuries on the spot. P.W.5, Luis D'Souza, states that he was sitting on the parked Kinetic Honda scooter beneath a tree on the right side of the road. He saw one girl coming from Sangolda to Porvorim on foot. According to him, suddenly one Tata Sumo jeep came from Porvorim and on reaching the Sangolda road dashed against the said girl and dragged the said girl from some distance. The said Tata Sumo jeep then dashed against him and he too was dragged from some distance. As a result of the accident, the left finger was amputated. According to him, the said Tata Sumo jeep had suddenly swerved from left side of the road and had knocked the said girl.

7. The learned Judicial Magistrate by his Judgment dated 24th January, 2001, convicted the Applicant for an offence punishable under Sections 279/304-A and 338 of the Indian Penal Code and sentenced him to undergo Rigorous Imprisonment for 6 months on each count. The Applicant was also found guilty for an offence punishable under Section 134(a) (b) of the Motor Vehicle Act, 1989 and was sentenced to pay a fine of Rs.300/- in default to undergo Simple Imprisonment for 15 days. The Applicant was also found guilty for an offence punishable under Section 3 of the Motor Vehicle Act, 1989 and was sentenced to pay a fine of Rs.200/- in default to undergo Simple Imprisonment for 10 days.

8. While convicting the Applicant as aforestated, the learned Trial Magistrate found that the evidence of the witnesses was convincing. The learned Trial Magistrate also found that the Applicant in his statement under Section 313 of Criminal Procedure Code had not stated as to how the accident occurred since a plea was made that the Applicant was neither rash nor negligent in driving the Tata Sumo jeep. Looking to the evidence on record, the learned Trial Magistrate recorded a finding that the Applicant had driven the said vehicle in a rash and negligent manner causing the death of Kum. Vandana Goel and causing grievous injury to P.W.5, Luis D'Souza.

9. The Applicant challenged his conviction and sentence by filing Criminal Appeal No.6 of 2001 before the Sessions Judge, North Goa, Panaji. The learned lower appellate Court by its Judgment dated 14th August, 2001, dismissed the Appeal and confirmed the sentence as passed on the Applicant by the learned Trial Magistrate. The learned lower appellate Court, while deciding the Appeal, has meticulously appreciated the evidence on record and has recorded a finding that in view of the prosecution evidence, which was found to be convincing and satisfactory, the prosecution had proved beyond reasonable doubt that the Applicant had driven his vehicle in a rash and negligent manner.

10. Mr. Nitin Sardessai, the learned Advocate appearing for the Applicant has urged before me that there was no evidence suggestive of the fact that the Applicant had driven his vehicle in a rash and negligent manner. According to him, the prosecution witnesses had admitted that the road was wet on account of rains and in such circumstances on application of brakes the vehicle is likely to swerve resulting in an accident. Thus, according to him, merely because of the accident, it cannot be presumed that the Applicant was either rash or negligent while driving the vehicle.

11. Mrs. Winnie Coutinho, the learned Additional Public Prosecutor appearing for the State has submitted that the two Courts below have appreciated the evidence and have come to a conclusion that the Applicant was rash and negligent in driving the vehicle. She has also submitted the Applicant in his statement under Section 313 of Criminal Procedure Code has not stated that the vehicle swerved on application of brakes by the Applicant. According to her, the fact that the vehicle suddenly swerved knocking down Kum. Vandana Goel and causing grievous injury to P.W.5, Luis D'Souza, is itself suggestive of rashness and negligence.

12. The two Courts below have appreciated the evidence and have recorded a finding that the Applicant was rash and negligent in driving the Tata Sumo jeep. The Applicant has caused the death of Kum. Vandana Goel and

has caused grievous injury to P.W.5, Luis D'Souza, by his rash and negligent act. In a revision under Section 397 of the Code of Criminal Procedure, it is not permissible for this Court to re-appreciate the evidence and come to a different conclusion than the one arrived at by the two Courts below unless it is shown to this Court that there is perversity in the appreciation of evidence by the two Courts below. It is true that concurrence cannot be used as a shield against the charge of perversity. It is equally true that the High Court would not shirk its responsibility and not re-appreciate the evidence merely because the two Courts below have concurrently held the Accused guilty. Re-appreciation of evidence by the High Court is permissible in the event it is brought to the notice of the High Court that the two Courts below have overlooked certain admissible evidence which if taken into consideration could have reasonably influenced the findings arrived at by the two Courts below. In the present case, the charge of perversity cannot be levelled against the two Courts below in their appreciation of evidence. In view of this matter, evidence of the prosecution witnesses cannot be re-appreciated for arriving at a conclusion different from the one arrived at by the two Courts below. After appreciating the evidence of the prosecution witnesses, the two Courts below have recorded a finding that the Applicant was rash and negligent in driving his vehicle which resulted in the death of Kum. Vandana Goel and in causing

grievous injury to P.W.5, Luis D'Souza. I have perused the evidence of all the prosecution witnesses and I find that the two Courts below have correctly appreciated the evidence and there is no occasion for me to record a finding different from the one arrived at by the two Courts below. Thus, I see no merit in the revision and the conviction does not deserve to be interfered with.

13. Mr. Nitin Sardessai, the learned Advocate appearing for the Applicant has further urged that the sentence of 6 months imprisonment for an offence punishable under Sections 279/304-A and the one under Section 338 of the Indian Penal Code have not been directed to run concurrently by the learned Trial Court. Since, both the offences have been committed in the same transaction, the sentence of imprisonment of 6 months for an offence punishable under Sections (i) 279/304-A and (ii) 338 of the Indian Penal Code deserve to be directed to run concurrently and not consecutively.

14. In the result, therefore, it is directed that the sentence of imprisonment of 6 months for an offence punishable under Sections 279/304-A and 338 of the Indian Penal Code shall run concurrently.

15. In the result, therefore, the conviction of the Applicant for the aforesaid offences is maintained with modification of sentence that the sentence of imprisonment of 6 months for an offence punishable under Sections 279/304-A and 338 of the Indian Penal Code shall run

concurrently. The conviction and sentence in respect of the offence under Section 134(a)(b) and under Section 3 of the Motor Vehicle Act, 1989 is maintained. Thus, the Revision is partly allowed on the aforesaid terms. The Applicant is granted 6 weeks time to surrender to his bail after which, the bail bonds shall stand cancelled.

(P . V . HARDAS)
JUDGE